

PT 04-9

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 03-PT-0003
v.)	
)	Tax Year 2001
CERRO GORDO COMMUNITY)	
AMBULANCE SERVICE)	
Applicant)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Walter Burger, Jr. of Burger, Fombelle & Zachry, P.C. for Cerro Gordo Community Ambulance Service.

Synopsis:

Cerro Gordo Community Ambulance Service (“applicant”) filed an application for a property tax exemption for a parcel of property located in Piatt County for the year 2001. The Department of Revenue (“Department”) denied the exemption, and the applicant timely protested the denial. An evidentiary hearing was held during which the applicant argued that the property qualifies for an exemption on the basis that it is owned by a charitable organization and used exclusively for charitable purposes. After reviewing the record, it is recommended that the Department’s determination be upheld.

FINDINGS OF FACT:

1. The applicant is a not-for-profit organization that was incorporated in Illinois in 1982. The essential purpose of the applicant is to provide ambulance service and emergency medical service to the people of the Cerro Gordo community, which includes portions of Piatt, Macon, and Moultrie counties. The community is approximately 120 square miles. (Applicant's Ex. #3; Dept. Ex. #1; Tr. p. 29)

2. On May 12, 2000, the applicant acquired property located at 304 East North Street in Cerro Gordo, Illinois. This is the property for which the applicant is seeking the exemption. (Dept. Ex. #1; Applicant's Ex. #12)

3. The property that the applicant acquired has a garage for two ambulances and a storage area for medical equipment and supplies. The building has offices that are used by EMT's, coordinators, billing personnel, and the Board of Directors. There is a meeting room that is used for Board meetings and EMT meetings. The room is also used to train and educate EMT's. (Dept. Ex. #1; Applicant's Ex. #13)

4. Any household within the community that the applicant serves may become a member of the applicant. To become a member, the household must pay a subscription fee every year. During 2001, the subscription fee was \$50. (Tr. p. 12; Applicant's Ex. #4)

5. The community that the applicant serves has about 4,000 people. The applicant has approximately 350 members. (Tr. pp. 33, 35)

6. Each member household that pays its yearly subscription fee is entitled to two free ambulance calls per fiscal year up to 35 miles one way. A membership may be terminated upon

the nonpayment of the subscription fee. The unused portion of a subscription fee is never refunded. (Applicant's Ex. #4)

7. The applicant does not offer a fee reduction or waiver program to become a subscriber/member of the applicant. (Dept. Ex. #1, p. 13; Tr. pp. 26-27)

8. If someone from a household that is not a member calls the applicant for its services, the applicant will answer the call and provide transportation to the appropriate medical facility. (Tr. p. 12)

9. The applicant has never refused to provide service to anyone in the community. If the applicant provides services to a non-member or a member who has already used its services twice during a fiscal year, the applicant will send the customer a bill for its services. (Tr. p. 12, 39, 42, 48)

10. The applicant sends monthly bills to its customers. If the applicant does not receive payment for these bills within two or three months, the applicant writes-off the amount that is owed. The applicant writes-off approximately \$1,000 per month. (Tr. pp. 15, 32; Applicant's Ex. #5)

11. Besides sending a monthly bill, the applicant has used other collection methods. These were for customers that the applicant believed had the financial capability to pay the bill. The applicant has pursued collection efforts through judicial proceedings once. (Tr. pp. 32-33)

12. The applicant advertises its services through fliers that are distributed throughout the community and posted at various retailers and the post office. Sometimes the EMTs will go door-to-door to ask for subscription memberships. (Tr. p. 27)

13. Nothing in the applicant's advertisements indicates that the applicant will waive its charges if the customer is unable to pay for its services. (Tr. pp. 30-31)

14. The applicant's EMT coordinator receives payment in the amount of \$400 per month. The EMT coordinator works on a part-time basis. All of the other personnel and Board members are volunteers from the community. (Tr. p. 13; Dept. Ex. #1)

15. The applicant always has a volunteer EMT available to respond to a call for an ambulance. (Tr. pp. 23-24)

16. The applicant does not have any capital, capital stock, or shareholders. (Applicant's Ex. #4; Tr. pp. 21-22)

17. During the fiscal year ending June 30, 2001, the applicant received a total amount of \$65,724.60 as payments for its services¹, which was approximately 50% of its total income of \$132,300.66. (Tr. pp. 41-44; Applicant's Ex. #15)

18. During the fiscal year ending June 30, 2001, \$15,475.06 was received as donations or memorials, which was approximately 12% of its income, and \$15,300 was received as subscriptions, which was approximately 12% of its income. (Applicant's Ex. #15)

19. During the calendar year of 2002, the applicant received a total amount of \$38,889.33 as payments for its services², which was approximately 62% of its total income of \$62,714.33. (Applicant's Ex. #16)

20. During the calendar year 2002, \$5,975 was received as donations or memorials, which was approximately 10% of its income, and \$17,850 was received as subscriptions, which was approximately 28% of its income. (Applicant's Ex. #15)

CONCLUSIONS OF LAW:

¹ This amount is the total of \$41,449.52 from reimbursements, \$22,050.08 from payments "received on account," and \$2,225.00 from miscellaneous services.

² This amount is the total of \$871.59 from reimbursements, \$35,392.74 from payments "received on account," and \$2,625.00 from miscellaneous services.

The provision of the Property Tax Code (35 ILCS 200/1-1 *et seq.*) that allows exemptions for charitable purposes provides in relevant part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity. (35 ILCS 200/15-65 (a)).

Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home v. Korzen, 39 Ill.2d 139, 156-57 (1968). If the primary use of the property is charitable, then the property is “exclusively used” for charitable purposes. Cook County Masonic Temple Association v. Department of Revenue, 104 Ill.App.3d 658, 661 (1st Dist. 1982). Incidental acts of charity by an organization are not enough to establish that the use of the property is charitable. Morton Temple Association, Inc. v. Department of Revenue, 158 Ill.App.3d 794, 796 (3rd Dist. 1987).

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. Chicago Patrolmen’s Association v. Department of Revenue, 171 Ill.2d 263, 271 (1996). The party claiming the exemption has the burden of clearly proving that it is entitled to the exemption, and all doubts are resolved in favor of taxation. Id.; City of Chicago v. Department of Revenue, 147 Ill.2d 484, 491 (1992).

In deciding whether an applicant actually and exclusively uses the property for charitable purposes, courts consider the following factors:

1. Whether the benefits derived are for an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government;
2. Whether the organization has no capital, capital stock or shareholders and earns no profits or dividends but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter;

3. Whether the organization dispenses charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses; and
4. Whether the exclusive (primary) use of its property is for charitable purposes.

Methodist Old Peoples Home at 156-57. These factors are not requirements but are guidelines that are considered in assessing an organization's charitable status. DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461, 468 (2nd Dist. 1995).

In addition to these guidelines, it is important to note that the charging of fees does not automatically disqualify the property from charitable use. See Small v. Pangle, 60 Ill.2d 510, 515 (1975). Also, the writing-off of amounts that the applicant is unable to collect does not automatically render the use charitable. See Alivio Medical Center v. Department of Revenue, 299 Ill.App.3d 647, 652 (1st Dist. 1998) ("writing off a bad debt is not tantamount to providing charity"). As the court stated in Alivio, writing-off a debt simply indicates that the applicant was unable to collect it. Alivio at 652.

In the present case, the applicant did not meet its burden of proving that the property is entitled to a charitable exemption. Although the applicant provides service to all of the households in the Cerro Gordo community, it also sends out bills to those households that are not members and to those members who have already received two free ambulance calls within the fiscal year. The charges that the applicant writes-off are the ones that it is unable to collect. The applicant engages in collection efforts to recover the amounts from some of its customers based on its subjective determination concerning the customer's ability to pay the bill. The applicant never reduces or waives its fees. Nothing in the applicant's advertisements indicates that the

applicant writes-off amounts that a customer cannot pay. A household must pay the full amount of the subscription fee in order to guarantee two free ambulance calls, regardless of its income. If a member leaves the community, the applicant never refunds the unused portion of the subscription fee. Under these circumstances, the applicant's services cannot be considered charitable.

In addition, the applicant's largest source of funds is not from either public or private charity. During the calendar year 2002, the applicant received approximately 62% of its income as payment for its services. Only 10% of its income for that year was from donations or memorials. The applicant received similar amounts for the fiscal year ending June 30, 2001. The applicant did not provide any financial information for the six-month period of July 1, 2001 through December 31, 2001. With such a large percentage of its income being derived from reimbursements or payments for its services, it cannot be found that the applicant derives most of its funds from public or private charity.

The applicant suggests that it should receive the exemption because the property that it previously owned and used was exempt. (Applicant's Ex. #8) That property was sold during the fiscal year ending June 30, 2001. The applicant states that the use of that property was the same as the use of the current property. (Tr. p. 18) Also, the applicant has indicated that it received a sales tax exemption number from the Department (Applicant's Ex. #10), and it is registered under the Charitable Trust Act (760 ILCS 55/1 *et seq.*). The applicant believes that these facts support a finding that it is entitled to a charitable exemption.

Each case concerning the tax status of a particular piece of property must be decided on its own facts. People v. Hopedale Medical Foundation, 46 Ill.2d 450, 462 (1970). In addition, being exempt from sales and use taxes is not determinative of whether property is entitled to a

property tax exemption. Id. at 464. A review of the evidence that was presented at this hearing indicates that the applicant does not meet the guidelines that are used to determine whether the property is entitled to the exemption. The Department's determination should, therefore, be upheld.

Recommendation:

For the foregoing reasons, it is recommended that the Department's determination be upheld and the applicant be denied the exemption.

Linda Olivero
Administrative Law Judge

Enter: March 24, 2004